TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1337. ~~S. C. 572~~ 290

GEORGE CORNWALL, PLAINTIFF IN ERROR,

vs.

THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED FEBRUARY 3, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1337.

GEORGE CORNWALL, PLAINTIFF IN ERROR,

vs.

THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Petition for writ of error	1	1
Transcript from circuit court of Henrico county	2	1
Judgment, &c.	2	2
Petition	3	2
Transcript from county court	4	3
Order to answer	4	4
Petition	5	4
Exhibit B—Receipt for coupons	6	5
Order to answer petition	6	5
Verdict	7	6
Judgment	7	6
Memorandum	8	6
Bill of exceptions No. 1	8	7
No. 2	9	8
No. 3	18	12
No. 4	19	13
Clerk's certificate	19	13
Judge's certificate	19	14
Judgment	20	14
Opinion	20	14
Clerk's certificate	23	17
Judge's certificate	23	17

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Submission	24	17
Judgment	24	17
Opinion	25	18
Clerk's certificate	27	19
Petition for writ of error	29	19
Writ of error	32	20
Citation	35	21
Proof of service of citation	36	21
Bond	37	21

1 VIRGINIA:

Pleas before the supreme court of appeals of Virginia, held at the State court-house in the city of Richmond, on Thursday, the 9th of December, 1886.

Be it remembered that heretofore, to wit, on the 6th day of March, 1886, came George Cornwall, by counsel, and filed in the clerk's office of the said court a petition praying for a writ of error to a judgment rendered by the circuit court of the county of Henrico, on the 26th of February, 1886; which petition, with the transcript of record accompanying the same, is as follows:

Petition.

To the honorable the judges of the supreme court of appeals of Virginia:

Your petitioner, George Cornwall, respectfully represents that he is aggrieved by a judgment of the circuit court of Henrico county affirming a judgment of the county court of Henrico county, rendered on the 8th day of February, 1886, in a proceeding instituted by your petitioner against the Commonwealth of Virginia under the act of January 14th, 1882, for the verification and identification of certain coupons tendered by him in payment of his State taxes for the year 1885.

A transcript of the record is herewith presented. On pp. 2–5, inclusive, of said transcript will be found the petition for appeal to said circuit court of Henrico county, which petition is here adopted and referred to as embodying the grounds of your petitioner's complaint.

Your petitioner prays that a writ of error be awarded him to said judgment, and that the same may be reversed for the errors manifest upon the face of said record.

And as in duty, etc.

GEORGE CORNWALL,
Petitioner, by Counsel.

SANDS & BRYAN, *p. q.*

2 I, George Bryan, an attorney, practicing in the supreme court of appeals of Virginia, do hereby certify that I have examined the foregoing record of Cornwall *vs.* Virginia; that in my opinion there is error therein, and that the judgment complained of should be reviewed and reversed.

GEO. BRYAN.

Writ of error awarded. Bond required in penalty of $150.
March 6, 1886. L. L. LEWIS.

To the clerk of the supreme court of appeals at Richmond.

Record from Circuit Court.

VIRGINIA, *Henrico County*, } *To wit:*

Pleas at the court-house of the county of Henrico, before the circuit court of said county, on Friday, the 26th day of February, in the year one thousand eight hundred and eighty-six (1886).

Be it remembered that heretofore, to wit, at a circuit court continued by adjournment and held for the county of Henrico, at the court-house, on Tuesday, the 23rd day of February, in the year eighteen hundred and eighty-six, came George Cornwall, by his attorneys, and presented his petition praying for a writ of error and supersedeas to a judgment of the county court of Henrico, entered on the 8th day of February, 1886, upon a petition filed by said George Cornwall in the said county court against the Commonwealth of Virginia for the identification and verification of certain coupons offered by him in payment of his taxes for the year 1885, whereby it was considered that the said George Cornwall take nothing by his said petition, but for his false clamor be in mercy, and that the Commonwealth of Virginia go thereof without day.

Whereupon, on considering said petition and the transcript of the record of the judgment aforesaid accompanying the same, the court doth order that a writ of error be awarded on behalf of said George Cornwall to the judgment complained of, upon the petitioner, or some one for him, giving bond with approved security, before the clerk of this court, in a penalty of fifty dollars, conditioned according to law. And it is further ordered that the attorney who prosecuted on behalf of the Commonwealth in this court, Geo. W. Thomas, Esqr., be notified that he be before this court on the 26th day
3 of this month, at the court-house, then and there to have a rehearing of the whole matter in said judgment contained.

The petition for said writ of error and supersedeas is in the following words and figures:

Petition.

To the Hon. B. R. Wellford, JR., judge of the circuit court of Henrico county:

Your petitioner, George Cornwall, respectfully represents that he is aggrieved by a judgment of the county court of Henrico county, rendered on the 8th day of February, 1886, in a proceeding instituted by him against the Commonwealth of Virginia, under the act of January 14th, 1882, for the verification and identification of certain coupons tendered by him in payment of his State taxes for the year 1885.

A transcript of the record is herewith presented, and contains, as your petitioner is advised, three distinct errors, a correction of which is now sought by this petition for appeal.

First. Upon the trial of the cause expert testimony was offered to prove the genuineness and legality of said coupons, but the court

excluded the testimony on the ground that a recent act of the General Assembly of Virginia, approved January 21st, 1886, entitled "An act to amend and re-enact section 39 of chapter 167, Code of 1873, in relation to rules, pleadings, and evidence," forbids the introduction of such testimony. Your petitioner excepted to this ruling on the ground that said act is repugnant to section 10, article one, of the Constitution of the United States, and therefore void.

Second. Your petitioner offered said coupons in evidence before the jury, and thereupon the attorney for the Commonwealth demanded that petitioner should produce the bond from which they were cut, in conformity with another act of the said General Assembly, approved January 26th, 1886, entitled "An act to provide a rule of evidence in certain cases." Your petitioner claimed and insisted that he should not be compelled to produce the bonds, alleging that said act is repugnant to said section and article of the Constitution of the United States, and is therefore void. The county court, however, sustained the constitutionality of the act, and your petitioner excepted.

Third. Your petitioner then moved the court to instruct the jury that, as there was no affidavit denying the genuineness and legality of the coupons, the burden of proving that they were not genuine and legal was upon the Commonwealth; but the court refused the instruction, basing its decision upon the statute hereinbefore mentioned, approved January 21st, 1886, and thus again upholding its constitutionality.

4 For these manifest errors your petitioner prays that a writ of error and supersedeas be awarded him to said judgment, and that the same may be reversed and remanded to the said county court of Henrico county for further proceedings according to law.

And as in duty bound, &c.

PETITIONER,
By Counsel.

SANDS & BRYAN, p. p.

I, George Bryan, an attorney practicing in the supreme court of appeals of Virginia, do hereby certify that I have examined the foregoing record of Cornwall *vs.* The Commonwealth of Virginia; that in my opinion there is error therein, and that the judgment complained of should be reviewed and reversed.

Feb'y 13, 1886.

GEO. BRYAN.

The transcript of the record of the judgment of the county court of Henrico accompanying said petition is in the following words and figures:

(*Transcript of the Record.*)

VIRGINIA, *Henrico County,* } *To wit:*

Pleas at the court-house of the county of Henrico, before the county court of said county, on Monday, the 8th day of February, in the year one thousand eight hundred and eighty-six (1886).

Be it remembered that heretofore, to wit, at a county court continued by adjournment and held for the county of Henrico, at the court-house, on Friday, the 18th day of December, eighteen hundred and eighty five, came George Cornwall and filed his petition in this court, alleging that certain tax-receivable coupons therein described, amounting to the sum of one hundred and thirty-two dollars, had been tendered by him to William Taylor, treasurer of the county of Henrico, or his deputy, in payment of certain taxes due the Commonwealth by said petitioner, which said coupons were received by said officer and have been delivered by him, securely sealed up, to the judge of this court, and that the said petitioner had paid said amount in money to the said officer in payment of said taxes.

Whereupon it is ordered that the attorney for the Commonwealth of the county of Henrico, upon being previously served with
5 a copy of this order, appear before this court on the first day of the next term to answer said petition.

The said petition and the exhibit therewith are in the following words and figures, to wit:

(*Petition.*)

To the Hon. E. C. Minor, judge of the county court of Henrico county:

Your petitioner, George Cornwall, respectfully represents unto your honor that he is a tax-payer of Henrico Co., Va.; that on the 30th day of November, 1885, being indebted to the State of Virginia $132.00, State tax, he tendered T. F. Taylor, deputy treasurer of said county, and the officer appointed by law to receive such taxes, in payment of so much thereof, $—— in past-due coupons (as per schedule herewith), cut from bonds of the said Commonwealth, issued under an act of the General Assembly, approved 30th March, 1871, and entitled "An act to provide for the funding and payment of the public debt," which said coupons are by law receivable for all taxes, debts, and demands due the State of Virginia, who received the same for the purpose of identification and verification, and forwarded them to this court for that purpose, according to law (see his receipt therefore, herewith filed, marked Exhibit "B," and prayed to be taken as a part of this petition). And thereupon your petitioner paid him the full amount of his taxes in money.

Your petitioner alleges that the said coupons are genuine, legal coupons, and are legally receivable for all taxes, debts, and demands due the Commonwealth of Virginia; and he prays that a jury be empannelled to try the question whether they are genuine, legal coupons, legally receivable for all taxes, debts, and demands

due the Commonwealth of Virginia. He prays that the State of Virginia be summoned to answer this petition, and that when the said coupons are ascertained to be genuine, legal coupons, receivable for all taxes, debts, and demands due the Commonwealth of Virginia, that this court will so certify, to the end that he may receive back the money so paid by him as aforesaid, according to law.

And he will ever pray, &c.

PETITIONER,
By Counsel.

SANDS, p. p.

6 (EXHIBIT "B.")

STATE REVENUE OFFICE,
No. 13 ELEVENTH STREET,
RICHMOND, VA., *30th Nov.*, 1885.

Received of George Cornwall tax-receivable coupons of the State of Virginia, in payment of State tax for 1885, to be handed the judge of the county court for identification and verification—the money for the tax is paid:

Coupons of $1.50, No. as follows:	Coupons of $3.00, No. as follows:	Coupons of $7.50, No. as follows:	Coupons of $15.00, No. as follows:	Coupons of $30.00, No. as follows:
	380			10423
	302			12126
	158			10398
	380			10034

Total, . . $132.00.

T. F. TAYLOR,
D. Treasurer.

Order Filing Petition and Summoning Attorney for the Commonwealth.

In the County Court of the County of Henrico. 1885, December 18th.

GEORGE CORNWALL, Pl't.,
against
THE COMMONWEALTH OF VIRGINIA, Def't.

On a petition for the identification and verification of certain coupons.

This day came George Cornwall and filed his petition in this court, alleging that certain tax-receivable coupons therein described, amounting to the sum of one hundred and thirty-two dollars, had been tendered by him to William Taylor, treasurer of the county of Henrico, or his deputy, in payment of certain taxes due the Commonwealth by said petitioner, which said coupons were received by said officer and have been delivered by him, securely sealed up, to the judge of this court, and that the said petitioner had paid said amount in money to the said officer in payment of said taxes:

Whereupon it is ordered that the attorney for the Com-
7 monwealth of the county of Henrico, upon being previously served with a copy of this order, appear before this court on the first day of the next term to answer said petition.

A copy.
Teste: SAMUEL P. WADDILL, *C. H. C.*

(Endorsed:) Executed by delivering a true copy to the within-named Geo. W. Thomas, Commonwealth att'y, H. C. C., on the 13 day of Jan'y, 1886.

J. P. NEUROHR, *D. S. H. C.*

And now at this day, to-wit, at a county court held for the said county of Henrico, at the court-house, on the day and year first herein written, to wit, on Monday, the 8th day of February, in the year 1886.

This day came again the petitioner, by his attorney, and the summons awarded against the attorney who prosecuted on behalf of the Commonwealth in this court having been returned executed, the said attorney appeared in court to defend the interest of the Commonwealth, and thereupon the said attorney for the Commonwealth, for plea, saith that the coupons mentioned in the plaintiff's petition and the schedule filed therewith are not genuine, legal coupons, and that they are not legally receivable for all taxes, debts, and demands due the Commonwealth of Virginia.

And issue was accordingly joined upon said plea. Whereupon came a jury to wit, Benjamin F. Corr, Eugene K. Gunn, E. C. Pollard, Bowler F. Eacho, William Talley, Ro. T. Crouch, E. L. Ford, Gus Winfield, Philip Kritzer, Clayton Woodson, Fred. Lynn, and Chas. Smith who were sworn to well and truly try the issue joined as aforesaid, and a true verdict give, according to the evidence, and having heard the same found the following verdict:

"We, the jury, find for the Commonwealth upon the issue joined."
(Signed) FREDERICK LYNN.

And thereupon the said plaintiff, by his attorney, moved the court to set aside the said verdict of the jury and grant him a new trial, upon the ground that the said verdict is contrary to the law, and the evidence; which motion the court overruled, and to which ruling the plaintiff excepted.

8 Therefore it is considered by the court that plaintiff take nothing by his petition, but for his false clamor be in mercy, and that the defendant, the Commonwealth of Virginia, go thereof without day.

Memorandum.

The plaintiff, to sundry opinions and judgments of the court given against him upon the trial of the case, and to the opinion and judgment of the court overruling his motion to set aside the verdict of the jury rendered in this case and grant him a new trial, excepted and tendered his bill of exceptions, numbered 1, 2, 3, and

4, which were signed and sealed by the court, and ordered to be made a part of the record of this case.

And at the instance of counsel for the petitioner the court certifies that at the hearing and in the record there was drawn in question the validity of the act of the General Assembly of the State of Virginia, approved January 26th, 1886, entitled "An act to provide a rule of evidence in certain cases;" and another act of the General Assembly, approved January 21st, 1886, entitled "An act to amend and re-enact section 39, of chapter 167, Code of 1873, in relation to rules, pleadings, and evidence," upon the ground that both of said acts are repugnant to section 10, article one, of the Constitution of the United States; but the decision and judgment of the court was in favor of the validity of each of said acts and of every part thereof, and against the rights claimed by the petitioner under said Constitution.

The bills of exceptions of the plaintiff are in the following words and figures, to wit:

(*Bill of Exceptions No.* 1.)

GEORGE CORNWALL
vs.
STATE OF VIRGINIA. } 1st bill.

Be it remembered that after the jury was sworn in this case the petitioner, to maintain the issue upon his part, introduced a witness, Geo. Bryan, who testified that he resided in the city of Richmond, and was a lawyer by profession; that he had seen and handled many thousands of the coupons issued by the State of Virginia, under the provisions of her act of Assembly of March 30, 1871, entitled "An act to provide for the funding and payment of the public debt," which, by the State's con-ract, are receivable for all taxes due to her; that he is satisfied he knows the said coupons of said State when he sees them; that all of said coupons so issued by said State are, so far as he knows, engraved only, and none of them are signed in the handwriting of any officer of said State, but
9 all of them, so far as he knows, have the signature of the State treasurer engraved thereon; that the coupons filed with the petition in this cause have not the handwriting of any officer of said State upon them, but the signature of the treasurer of the State engraved thereon. Thereupon, the petitioner's counsel asked the witness the following question: "Look at the coupons filed with the petition and presented to you by the court, and say whether, in your opinion, they were issued by the State of Virginia under the provisions of her act of Assembly of March 30, 1871, entitled "An act to provide for the funding and payment of the public debt." To the asking of which question the Commonwealth, by her attorney, Geo. W. Thomas, objected, upon the ground that the act of the Gen. Assembly of the State Virginia, approved January 21st, 1886, entitled "An act to amend and re-enact section 39 of chapter 167, Code of 1873, in relation to rules, pleadings and evidence, forbids the petitioner to ask said question, and forbids the

witness to answer the same; and the petitioner, by counsel, claimed that said act of Assembly is repugnant to section 10, article 1, of the Constitution of the United States; but the court ruled that said act is not repugnant to said section of said Constitution, and that said court excluded said question, and forbade said witness to answer the same, to which ruling of the court the petitioner by counsel excepted, and tendered this his first bill of exceptions, which is signed, sealed, and made a part of the record.

E. C. MINOR, *Judge.* [SEAL.]

(*Bill of Exceptions, No.* 2.)

GEORGE CORNWALL *vs.* STATE OF VIRGINIA. } 2d bill.

Be it remembered, that after the petitioner had introduced the evidence set out in his first bill of exceptions, which is hereby referred to and made a part this his 2d bill of exceptions, he offerred in evidence the coupons described in the petition, which coupons are in the words and figures following, to wit:

10 Receivable at and after maturity for all taxes, debts and demands due the State.

The Commonwealth will pay Thirty interest due } Womans' face. { of Virginia, the Bearer Dollars 1st Jan'y, 1885.

Coupon No. 27 on Bond No. 12126.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., New York.)

Endorsed: Receivable at and after maturity for all taxes,

{ 27 }

debts and demands due the State (National Bank Note Company, New York,) (in writing). Rec'd of G. C. State tax, 85, 11-30, 85.

11 Receivable at and after maturity for all taxes, debts and demands due the State.

The Commonwealth will pay Thirty interest due } Woman's face. { of Virginia the Bearer Dollars. 1st Jan'y, 1885.

Coupon No. 27 on Bond No. 10,034.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., New York.)

Endorsed: Receivable at and after maturity for all taxes, debts

{ 27 }

and demands due the State (National Bank Note Company, New York) (in writing). Rec'd of G. C. State tax 85, 11–30, 85.

---

12 Receivable at and after maturity for all taxes, debts and demands due the State.

The Commonwealth will pay Thirty interest due } Woman's face. { of Virginia the Bearer Dollars. 1st Jan'y, 1885.

Coupon No. 27 on Bond No. 10,398.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., New York.)

Endorsed: Receivable at and after maturity for all taxes, debts

{ 27 }

and demands due the State (National Bank Note Company, New York) (in writing). Rec'd of G. C. State tax 11–30–85; State tax, 85.

13 Receivable at and after maturity for all taxes, debts, and demands due the State.

The Commonwealth will pay Thirty interest due } Woman's face. { of Virginia. the Bearer Dollars, 1st Jan'y, 1885.

Coupon No. 27 on Bond No. 10,423.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., New York.)

Endorsed: Receivable at and after maturity for all taxes,

{ 27 }

debts, and demands due the State (National Bank Note Company, New York) (in writing.) Rec'd of G. C. State tax 85, 11–30–85.

---

14 Receivable at and after maturity for all taxes, debts, and demands due the State.

{ Child's face. } The Commonwealth of Virginia will pay the Bearer Three Dollars, interest due 1st July, 1884, on Bond No. 380.

Coupon No. 26.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., N. Y.)

Endorsed: Receivable at and after maturity for all taxes, debts, and demands due the State.

{ 26 }

(National Bank Note Co., N. Y.) (in writing.) Received of G. C. State tax, 11–30–85.

15 Receivable at and after maturity for all taxes, debts and demands due the State.

Child's face. The Commonwealth of Virginia, will pay the Bearer Three dollars, interest due 1st Jan'y, 1885, on Bond No. 380.

Coupon No. 27.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., N. Y.)

Endorsed: Receivable at and after maturity for all taxes, debts and demands due the State

{ 27 }

(in writing). Rec'd of G. C. State tax, 85, 11-30-85.

---

16 Receivable at and after maturity for all taxes, debts and demands due the State.

Child's face. The Commonwealth of Virginia, will pay the Bearer Three dollars, interest due 1st January, 1884, o- Bond No. 302.

Coupon No. 25.

GEO. RYE,
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., N. Y.)

Endorsed: Receivable at and after maturity for all taxes, debts and demands due the State.

{ 25 }

(National Bank Note Co., N. Y.) (in writing.) Rec'd of G. C. State tax, 85, 11-30-85.

17 Receivable at and after maturity for all taxes, debts, and demands due the State.

{ Child's face. } The Commonwealth of Virginia. will pay the Bearer Three Dollars, interest due 1st Jany, 1885, on Bond No. 158.

Coupon No. 27.

GEO. RYE.
Treasurer of the Commonwealth of Virginia.

(National Bank Note Co., N. Y.)

Endorsed: Receivable at and after maturity for all taxes, debts, and demands due the State.

{ 27 }

(National Bank Note Co., N. Y.) (in writing.) Rec'd of G. C. State tax, 85, 11-30-85.

18 Which said coupons were taken from an envelope securely sealed by the judge of the court, which envelope had upon it the following endorsement: "$132.00 Va. tax rec. coupons. Received of George Cornwall, the coupons mentioned above for State tax, 1885, the same to be handed the judge of the county court for identification and verification according to law.

"T. F. TAYLOR, *D. T.*

"Henrico Co., Nov. 30th, 1885."

And thereupon the State of Virginia, by her attorney, Geo. W. Thomas, demanded that the petitioner should produce the bonds from which said coupons were cut, in conformity with an act of the Assembly of Virginia, approved January 26th, 1886, entitled "An act to provide a rule of evidence in certain cases;" but the petitioner claimed and insisted that he was not oblige- to produce the bonds from which the said coupons were cut, and he claimed that said act of Assembly is repugnant to section ten, article one of the Constitution of the United States; but the court ruled that said act is not repugnant to said section of said Constitution; and the court further ruled that the petitioner should produce the bonds from which said coupons were cut; and the petitioner declined to produce said bonds; the court excluded the said coupons from the jury as evidence; to each of which rulings the petitioner, by counsel, excepted, and tendered this, his 2d bill of exceptions, which is signed, sealed, and made a part of the record.

E. C. MINOR, *Judge.* [SEAL.]

(*Bill of Exceptions No.* 3.)

GEO. CORNWALL
vs.
STATE OF VIRGINIA. } 3rd bill.

Be it remembered that after the evidence set out in the petitioner's first and second bill- of exceptions, which are hereby referred to and made a part of this his third bill of exceptions, which evidence was all the evidence produced on the trial of this case, had been offered and introduced, the petitioner, by counsel, prayed the court to instruct the jury as follows: The court instructs the jury that, as no one denies the genuineness of the coupons produced before the jury on oath, the burden of proving that said coupons are not genuine, legal coupons, which are legally receivable for taxes, debts, and demands due the State of Virginia, is upon the State of Virginia; but the court being of opinion that the act of the General Assembly of Virginia, approved January 21st, 1886, entitled an act to amend and re-enact section 39 of chapter 167, Code of 1873, in relation to rules, pleadings, and evidence, forbids it to give said instructions, refused to give the same to the jury, notwithstanding the claim of the petitioner that said act is repugnant to section ten, article one of the Constitution of the United States; to which action and ruling of the court, refusing to give said instructions, the petitioner, by counsel, excepted and tendered this his third bill of exceptions, which is signed, sealed, and made a part of the record.

19

E. C. MINOR, *Judge.* [SEAL.]

(*Bill of Exceptions No.* 4.)

GEO. CORNWALL
vs.
STATE OF VIRGINIA. } 4th bill.

Be it remembered that after the jury had rendered a verdict in this cause the petitioner, by counsel, moved the court to set the same aside, and grant him a new trial, upon the ground that the verdict is contrary to the law and the evidence; which motion the court overruled, and refused to set the said verdict aside and grant the said petitioner a new trial; and being asked to certify the said evidence, the court certifies that the evidence set out in the petitioner's first, second, and third bills of exceptions, which are hereby referred to and made a part of this bill of exceptions, which was all the evidence produced at the trial; to which action of the court the petitioner, by counsel, excepted, and tendered this his fourth bill of exceptions, which is signed, sealed, and made a part of the record.

E. C. MINOR, *Judge.* [SEAL.]

STATE OF VIRGINIA,
County of Henrico, } *To wit:*

I, Samuel P. Waddill, clerk of the county court of the said county of Henrico, in the State of Virginia, do hereby certify that the fore-

going and annexed is a true transcript of the record in the case of George Cornwall against The Commonwealth of Virginia, lately depending in said court, as appears from the records of the said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the court-house, this 12th day of February, 1886, in the 110 year of the Commonwealth.

[SEAL.] SAMUEL P. WADDILL, *Clerk.*

STATE OF VIRGINIA, *County of Henrico,* } *To wit:*

I, Edmund C. Minor, only judge of the county court of the county of Henrico, in the State of Virginia, do certify to Samuel P. Waddill, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same the clerk of the said court, and that his said attestation is in due form.

Given under my hand and seal this 12th day of February, 1886.

E. C. MINOR, *Judge.* [SEAL.]

Fee, for this transcript, $7.37.

At which day, to wit, at a circuit court, continued by adjournment, and held for the county of Henrico at the court-house, on the day and year first herein written, to wit, on Friday, the 26th day of February, 1886.

This day came the plaintiff in error, by counsel, and The Commonwealth of Virginia, by the attorney for the Commonwealth of the county of Henrico, and this cause being docketed by consent, and the court having maturely considered said petition and the transcript of the record of the judgment of the said county court, and the arguments of counsel, is of opinion, for reasons in writing filed in the papers and made a part of the record, that there was no error in the action of the court below, whether the Acts of Assembly in the bill of exceptions mentioned be or be not repugnant to the Constitution of the United States; as to which question the court thinks there is no necessity to express any opinion. And it is therefore considered that the same be affirmed, and that the Commonwealth of Virginia, the defendant in error, recover against the said plaintiff in error the cost by it about its defence herein expended.

The opinion of the court is in the following words and figures:

Opinion.

CORNWALL *vs.* COM'H, &c., *Feb'y*, '86.

The record in this case presents for review four alleged errors of the court below.

1st. The plaintiff excepted to the refusal of the court to allow a witness to be examined as an expert to prove the genuineness of the coupons. The bill of exceptions shows that the reason assigned by the court was that the introduction of expert evidence was forbidden by a recent act of the General Assembly, approved Jan. 21st, '86, and

overruled the objection of the plaintiff that the said act was unconstitutional. I do not think that it is necessary, or that it
21 would be proper, upon this record to express any opinion whether the learned judge was correct in this reason. If I were of opinion that he was wrong, and that the act was unconstitutional, I would still be compelled to affirm his action. Conceding that the law was unconstitutional, I think the court would have committed error if the witness had been allowed to give his opinion in evidence. No proper foundation was laid for his examination as an expert. I think it only necessary, as to this point, to refer to the opinion of Judge Moncure, speaking for the whole court, in Ellis *vs.* Harris, 32 Grat., 689 and 690.

2nd. The 2nd bill of exceptions shows that upon the offer by the plaintiff of the coupons in evidence the attorney for the Commonwealth demanded the production of the bonds from which the coupons are alleged to have been cut, and that the court sustained his demand. Thereupon the plaintiff declined to produce the bonds; and no evidence having been offered to show that the bonds were not in his possession or under his control, and no secondary evidence being tendered, the court refused to allow the coupons to be offered in evidence. The bill reserves to the plaintiff the benefit of exceptions to both rulings of the court, 1st, that the plaintiff should produce the bonds; and 2nd, that in the absence of the bonds and any secondary evidence, the coupons themselves were inadmissible as evidence.

I am of opinion that the court was clearly right in both of these rulings. It appears from the 1st bill of exceptions that these coupons did not have the handwriting of any officer of the State upon them, but the signature of the treasurer of the State engraved thereon. The act of Assembly under which these coupons were alleged to have been issued, authorized the issue of coupons with a fac simile of the treasurer's signature engraved thereon; but these coupons thus issued were to be attached to bonds to be signed by the treasurer and countersigned by the 2d auditor. Sess. Acts 1870–'71, p. 379, § 4.

The act of Assembly under which the plaintiff was proceeding put in issue the genuineness of his coupons.

Undoubtedly the best evidence of their genuineness would have been the production of the bonds from which they were taken and proof that the coupons had been cut therefrom. In the absence of any evidence to the contrary, the bonds must have been presumed to have been in his possession or under his control.

One of the fundamental rules which govern in the production of evidence is that which requires the best evidence of which the case in its nature is susceptible. 1 Greenleaf, § 82. Or, in the language of another standard author, one of the most important rules is that which requires that the best attainable evidence shall be adduced to prove every disputed fact. 1 Starke on Ev., 500.

Judge Story, in U. S. *vs.* Britton, 2 Mason, 463, says: "I take the rule to be universally true, and applicable as well to criminal
22 as civil proceedings, that the best evidence the nature of

the case admits of and that is within the reach of the party, is always to be produced, for the law will never suffer secondary evidence to be admitted when there is better behind and within the power of the party."

In Sebree *vs.* Dorr, 9 Wheat., 678, the U. S. Supreme Court reversed a judgment of the circuit court of Kentucky, because, though secondary evidence had been received, "there was no production of the original notes, nor any excuse offered to account for the non-production of them at the trial." It was urged that the statute of Kentucky, similar to our own, which dispensed with the necessity of proof of execution of the notes unless the defendant on oath denied them—which the defendant had not done—relieved the plaintiff of the burden of producing the notes. But the Supreme Court held that it did not; and Judge Story, delivering its judgment, says: "It is too much to expect any court of justice to infer upon so slight a foundation the abolition of these salutary rules of evidence which constitute the great security of the property and rights of the citizens." 9 Wheat., 681.

There was no error, then, in the action of the court in sustaining the demand of the Commonwealth for the production of the bonds. The subsequent action of the court in rejecting the coupons as evidence was consequential and necessarily right. When the plaintiff refused to produce the bonds, or to produce any evidence to explain his refusal, or any secondary evidence of the genuineness of his coupons, if there had been tender of evidence to explain his refusal and of any secondary evidence, the construction and constitutional validity of the act of Assembly, approved Jan'y 26th, 1886, might have been necessarily involved. I am not prepared to say, however, that it would, unless that act is to be interpreted to mean, as it does not say, that no secondary evidence can under any circumstances be admitted. I think it is nothing more than a legislative affirmation of pre-existing law.

3rd. The 3d bill of exceptions imputes error to the court in refusing to give an instruction asked by the plaintiff.

There can be no occasion for complaint in this exception. The record shows that there was no evidence before the jury to verify the coupons. Expert evidence had been offered and refused. The coupons had been offered, and, in the absence of any evidence to show their genuineness, had been rejected as evidence.

There was then no evidence before the jury, and the only instruction which the court could have given was that the jury was compelled to find for the Commonwealth.

There was, then, certainly no error in refusing the instruction asked by the petitioner.

4th. After the jury had rendered its verdict, the petitioner moved to set it aside and award him a new trial. The court overruled the motion and entered judgment pursuant to the verdict.

23 This entry of judgment was a necessary consequence of the previous action of the court. It was clearly right unless there had been some error in that previous action.

My opinion already expressed as to the propriety of that action

renders it unnecessary for me to say more than that I can see no error in the action of the court, which the 4th bill of exceptions asks to be reviewed.

I am of opinion that the validity of the acts of Assembly, referred to in the several bills of exceptions, are not involved in the determination of this appeal.

If they had never been enacted, there would have been no error in the action of the court of which the plaintiff complains.

The judgment of the county court must therefore be affirmed.

Fee for the transcript, $10.37.

STATE OF VIRGINIA, }
County of Henrico, } *To wit:*

I, George W. Carter, clerk of the circuit court of the said county of Henrico, in the State of Virginia, do hereby certify that the foregoing and annexed is a true transcript of the record in the case of George Cornwall against The Commonwealth of Virginia, lately depending in said court upon a writ of error, as appears from the records of the said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the courthouse, this 2nd day of March, 1886, and in the 110 year of the Commonwealth.

[SEAL.] GEO. W. CARTER, *Clerk.*

STATE OF VIRGINIA, }
County of Henrico, } *To wit:*

I, Beverley R. Wellford, Jr., only judge of the circuit court of the county of Henrico, in the State of Virginia, do hereby certify that George W. Carter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, the clerk of the said court, and that his said attestation is in due form.

Given under my hand and seal this 2d day of March, 1886.

B. R. WELLFORD, *Judge.* [SEAL.]

24 And at another day, to wit:

At a supreme court of appeal held at the State court-house in the city of Richmond, on Friday, November 5th, 1886.

This cause was this day fully heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, but, because the court here is not yet advised of its judgment to be rendered in the premises, time is taken to consider thereof.

And now at this day, to wit:

At a supreme court of appeals held at the State court-house in the city of Richmond, on Thursday, the 9th of December, 1886.

This day came again as well the plaintiff in error, by his counsel, as the attorney general on behalf of the Commonwealth, and the court having maturely considered the transcript of the record of the judgment aforesaid, and the arguments of counsel, is of opinion

for reasons stated in writing and filed with the record, that there is no error in the said judgment.

It is therefore considered that the same be affirmed, and that the Commonwealth recover against the plaintiff in error thirty
25 dollars damages, and also her costs by her about her defense herein expended, which is ordered to be certified to the said circuit court of the county of Henrico.

Which written opinion is in the words and figures following:

Opinion.

CORNWALL *vs.* THE COMMONWEALTH.

LACY, *J.*

This is a writ of error to a judgment of the circuit court of Henrico county, affirming a judgment of the county court of Henrico.

Having tendered coupons in payment of his taxes, upon the verification of the same, the plaintiff in error was required to produce the bond from which the said coupons were cut, the said coupons not being signed by the treasurer of the State, nor any other officer of the State, but being wholly printed or engraved by machinery. This is a plain requirement of the law of this State, the bond being signed by the State treasurer, it was the best evidence of the execution of both bond and coupons if the same had in fact been executed by any person authorized by law to bind the State.

The plaintiff in error refused to produce the bond, not
26 alleging any inability to do so, but claimed that the law of this State so requiring the bond to be produced was unconstitutional, in that it was in conflict with the 10th section, article one, of the United States Constitution, which provides that no State shall pass any law impairing the obligation of contracts.

This rule of evidence is in accordance with the common law principal of evidence in force in this State, which is in force and applicable to all the citizens of this State alike, and in no way whatever affects the obligation of any contract, proved or unproved, real or imaginary.

The cited clause of the U. S. Constitution has no application whatever to rules of evidence prescribed by the law-making power of this State, to govern proceedings in her own courts.

The said provision of the U. S. Constitution has no application to this case. This is a suit against the State of Virginia, and the plaintiff in error can only sue the State by her own consent, and when he avails of this consent he must pursue the remedy
27 as it is provided by the law; he has no other in this or any other forum.

As to the other question, that the court refused to allow the counsel in the case to act as an expert in the premises and prove the genuineness of the coupons he had been employed to collect, we are of opinion that the trial court was plainly right; the laws of Virginia forbid the use of expert testimony in such cases, and even though this attorney-at-law should be an expert in such matters, he

could not be received as such under our laws until the Legislature of Virginia shall see fit to change the law upon the subject.

There is no error in the judgment complained of and it must be affirmed.

A transcript of the record.

Teste: GEO. K. TAYLOR, *C. C.*

Fee for transcript, $8.00.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

28 I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record and proceedings upon a writ of error lately pending in said court in which George Cornwall was plaintiff in error and the Commonwealth of Virginia was defendant in error.

In testimony whereof I have hereto set my hand and annexed the seal of said court this 4th day of January, 1887.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR, *Clk.*

29 To the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

Your petitioner, George Cornwall, respectfully represents that he is aggrieved by a judgment of the supreme court of appeals of the State of Virginia, pronounced on the 9th day of December, 1886, affirming a judgment of the circuit court of Henrico county, both of which latter judgments equally aggrieve your petitioner.

A transcript of the record of said judgments are presented herewith, which transcript will show that this record presents the two questions which are presented separately in the records of Newton and Wife *v.* The State of Virginia, and Buruss *v.* The Same, which latter two records are presented along with the record in this cause with a prayer for a writ of error in each. But the record in this cause presents the additional question involved in instructions to the jury prayed for and found in the 3rd bill of exceptions (record

30 page 18), which question is, if the genuiness of the coupons is not denied on oath, does not the coupon contract *ex vi termini* entitle the holder of it to have it presumed to be genuine, the State having placed it upon the markets of the world without any handwriting upon it by which its genuineness might be certainly proved. And if this be so, is not a law which requires the plaintiff to take upon himself the burden of proving it genuine, when its genuineness has not been denied, a law that impairs the obligation of the contract.

Your petitioner therefore prays for a writ of error, and that said judgments may be reversed.

PETITIONER,
By his Attorney, Wm. L. Royall.

31 [Endorsed:] Cornwall *v.* Virginia. Petition for writ of error.

32 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between George Cornwall, appellant, and the State of Virginia, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of
33 or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said George Cornwall, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under you seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States
for the East. Dist. of Virginia.

Allowed by—
M. R. WAITE, *Chief Justice, U. S.*

December 21, 1886.

34 VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Richmond, January 4th, 1887.

I, George K. Taylor, clerk of the supreme court of appeals of

Virginia, at Richmond, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand this 4th January, 1887.

GEO. K. TAYLOR, *Clk.*

35 The United States of America to the State of Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein George Cornwall is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-six.

M. R. WAITE.

36 On this 28th day of Dec'r, in the year of our Lord one thousand eight hundred and eighty-six, personally appeared A. B. Guigon before me, the subscriber, J. M. Skinner, a notary public in and for the city of Richmond, State of Va., and makes oath that he delivered a true copy of the within citation to Fitzhugh Lee, Governor of Virginia, and R. A. Ayers, attorney general of Virginia, on the 28th of December, 1886.

A. B. GUIGON.

Sworn to and subscribed the 28th day of Dec., 1886, before the undersigned, a notary public in and for the city of Richmond, Va.

J. M. SKINNER, *N. P.*

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Richmond, Jan'y 4th, 1887.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand this 4th Jan'y, 1887.

GEO. K. TAYLOR, *Clk.*

37 Know all men by these presents that we, William L. Royall and A. B. Guigon, are held and firmly bound unto the State of Virginia in the full and just sum of five hundred dollars, to be paid to the said State of Virginia, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand eight hundred and eighty —.

Whereas, lately, at a supreme court of appeals for the State of Virginia, in a suit depending in said court between George Cornwall, appellant, and The State of Virginia, appellee, judgment was rendered against the said George Cornwall, and the said Cornwall, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Virginia, citing and admonishing her, to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next.

38 Now, the condition of the above obligation is such that if the said George Cornwall shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

WM. L. ROYALL. [SEAL.]
A. B. GUIGON. [SEAL.]

Approved by—

M. R. WAITE, *Chief Justice, U. S.*

Dec. 21, 1886.

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Richmond, January 7th, 1887.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the original bond, of which the foregoing is a copy, is on file in my office.

Given under my hand this 4th day of January, 1887.

GEO. K. TAYLOR, *Clk.*

[Endorsed:] Cornwall *v.* Commonwealth. Copy bond.

[Endorsed on cover:] Virginia. Sup. court of appeals. No. 1337. George Cornwall, plaintiff in error, *vs.* The State of Virginia. Filed February 3, 1887. [Stamped:] Supreme Court, U. S. Received Jan. 27, 1887. Clerk's office.